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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

**“SHARIA COURTS AS INSTRUMENTS OF ALTERNATIVE  
DISPUTE RESOLUTION: ASSESSING THEIR  
FUNCTIONALITY, EFFECTIVENESS, AND IMPACT ON  
ACCESS TO JUSTICE IN INDIAN LEGAL FRAMEWORK”**

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**Abstract**

The purpose of this paper is to look deeply into the origin, working, constitutionality, and need of the Sharia court as these have been criticized very much lately and are termed as a parallel justice system. This article takes a look into the benefits of mediation and ADR from Islamic as well as secular perspectives. It also shows how the privatization of justice has become a trend.

The research was conducted by the researchers in Darul Qaza (South Delhi and South East Delhi) which gives an objective look into the speedy and inexpensive justice delivered by them. It proves that contrary to the popular belief that Islamic law subjugates women, 90% of the people who approach these courts are women.

Sharia Courts are not a parallel justice system but an Alternative Dispute Mechanism for the poor. It is cheap, speedy, and transparent. It helps Muslims to solve their civil disputes amicably. Application of Muslim law involves interpretation of the Quran and other principles which is done by Qazis who are well trained in this field. Their verdict is nonbinding in nature. It applies to the Muslim Personal Law (Shariat) Application Act, 1937, and not the real Sharia. So, the claim that the Sharia Court will subvert the rule of law is totally absurd. There is nothing new about the establishment of these courts as numerous Darul Qaza are already functional in India. The Supreme Court has denied to term them unconstitutional. They are well in line with the Indian constitution and are need of the hour.

**Keywords:** Alternative Dispute Resolution, Sharia court, Darul Qaza, etc

## 1. Introduction

The Arabic word 'Sharia' means "a clear well-trodden path." It is a set of principles that are derived from two major sources- the Quran and Hadith (the actions and teachings of Prophet Muhammad (PBUH)). The body of legal rulings which is derived from it is called sharia law (Fiqh). It covers every aspect of life including prayer, fasting, marriage, divorce, inheritance, Judicial processes, etc.

It also offers a very simple, systematic, and effective procedure of dispute resolution called Qaza, the person who judges according to this law is called Qazi (judge), and the place where dispute resolution or reconciliation takes place is termed as Darul Qaza (Sharia Court).

In Islam, persons who mediate reconciliation between conflicting parties receive a large reward. According to Abu Darda, the Prophet (PBUH) said:

*"Shall I not inform you of something more excellent in degree than (voluntary) fasting, prayer, and alms giving?" The people replied, "Yes, Prophet of Allah." He said- "It is putting things right between people, spoiling them is the shaver (destructive)."*<sup>1</sup>

Further, the Quran in Chapter 49 verse 10 provides that:

*"The believers are but a single Brotherhood: So make peace and reconciliation between your two (contending) brothers: And fear Allah that ye may receive Mercy"*<sup>2</sup>

Thus exhibiting the fact that Islamic jurisprudence focuses extensively on reconciliation to solve disputes. However, in the present Indian context, Shariya Courts are not courts but mere arbitration centers. It tries to solve disputes and offer solutions to the Muslims approaching them wherein the procedure is done outside of the formal justice system and in an amicable and inexpensive manner. Thus, Dar-ul-Qaza serves as an arbitrator, mediator, or conciliator for civil disputes between Muslims, rather than administering criminal justice.<sup>3</sup> The judgment given by these courts has no legal sanctity and the parties are free to approach formal courts.

The efforts of the All India Muslim Personal Law Board (AIMPLB) to establish a sharia court in every district has given a fresh start to an uninformed debate where these courts are termed as a parallel judicial system and questions are raised as to why Muslims need their own adjudication centres when they have access to the legally constituted courts.

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<sup>1</sup> Sunan Abi Dawud, 4919.

<sup>2</sup> Quran: Chapter 49 verse 10.

<sup>3</sup> Vishwa Lochan Madan vs Union Of India & Ors, [AIR 2014 SC 2957](#)

This paper deals with all these issues and clarifies the constitutionality of Darul Qaza, its working, necessity, the trend of privatization of justice, Alternative Dispute Resolution Mechanism, and the ways in which it serves as a helping hand to our formal judicial system.

## **2. Historical Perspective of Darul Qaza**

The origin of Sharia is traced back to the 7th century with the advent of Islam in Arabia. Before Islam, the tribes inhabiting Arabia fought with one another and retribution was the basic norm. Each tribe had its own law governing matters between them regarding marriages and other customs.

The oldest form of conflict resolution in Islamic jurisprudence is Sulh, which involves compromise, settlement, or agreement between parties. According to a Hadith, Prophet Mohammad recommended the use of Sulh to resolve disputes.

*“There is a sadaqah to be given for every joint of the human body and for every day on which the sun rises there is a reward for the sadaqah for the one who establishes sulh and justice among the people.”<sup>4</sup>*

Sharia being divine in origin became an integral part of the Muslim religion and flourished with the spread of Islam across the world. Later in the Abbasids period, four schools of Sunni law<sup>5</sup> evolved which set up the rules and guidelines of sharia based on sources of sharia apart from the Quran and Hadith, such as Ijma and Qiyas.

Islam was brought to India by the Muslim invaders. During the Muslim rule, Qazis held a pivotal position in the application of Muslim law. They enjoyed certain judicial and nonjudicial powers. With the establishment of British control in India, the Kazis Act of 1880 limited their adjudicatory powers, and judges and magistrates took over their roles.

However, by enacting specific laws from time to time, the State was able to designate Kazi-ul-Kuzaat and Kazis, and the law recognized their non-judicial powers. Further, The Muslim Personal Law (Shariat) Application Act was passed in 1937 with the goal of developing an Islamic law framework for Indian Muslims.<sup>6</sup>

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<sup>4</sup> Sahih Al-Bukhari Hadith No. 3857.

<sup>5</sup> Hanafi, Shafai, Maliki, Hanbali school of law.

<sup>6</sup> Vandana Singh, Alternative Dispute Resolution In Islam: An Analysis, 4 ILI Law Review, 1 (2017).

Amidst this Moulana Abul Sajjad, the renowned Muslim scholar established Imarat-e-Shariah, Phulwari Sharif, Patna in 1921. It runs a chain of Darul Qaza in the state of Bihar, Jharkhand, and Orissa. Since then more than 40000 cases have been amicably resolved by these courts.<sup>7</sup> AIMPB has also established a considerable number of Darul Qazas across the country. In 2014, Zakia Soman, a women's rights activist established the very first all women sharia court in India. Currently, around 400 Darul Qaza are operating in our country.<sup>8</sup> The purpose of this system is to provide speedy and inexpensive justice in line with Islamic laws.

### **3. Alternative Dispute Resolution in Islam**

Prophet Muhammad (PBUH) have always been a supporter of solving disputes amicably as he even permitted to innovate a good lie or exaggerated statement that may bring peace and harmony between the parties.

“Narrated Um Kulthum bint Uqba that she heard Allah's Apostle (P.B.U.H) saying ‘*He who makes peace (sulh) between the people by inventing good information or saying good things, is not a liar*”.

There is evidence that shows the prophet himself went to settle disputes.

“Narrated Sahl bin Saad: *There was a dispute amongst the people of the tribe of Bani Amr bin Auf. The Prophet went to them ..... in order to make Sulh (Peace) between them.*”

“Narrated Sahl bin Saad: *Once the people of Quba fought with each other till they threw stones at each other. When Allah's Apostle was informed about it, he said: “Let us go to bring about reconciliation between them.”*

The various ADR processes recognized under Islam are:

- Sulh (mediation, conciliation, and compromise)
- Tahkim (arbitration)
- Muhtasib (ombudsman)
- Fatwa (opinion of mufti)

**a) Sulh:** Sulh literally means to ‘finish a dispute’ by compromise, settlement, or agreement. The parties may settle a dispute among themselves or they may even involve a third party. It is done in such a way that there is no win or lose situation. The most

<sup>7</sup> Available at: <http://www.imaratshariah.com/about.php> (Last Visited on 6th February 2025).

<sup>8</sup> Sharia court decoded, India today, New Delhi edn. July 13 2018, Available at: <https://www.indiatoday.in/fact-check/story/fact-file-sharia-courts-decoded-1285236-2018-07-13> (Last Visited on 6th February 2025).

important objective is to prevent enmity between the parties and facilitate their peaceful relationship.

The only basic rule in regard to sulh is that no compromise should be made in regard to *hukukallah* (The rights of Allah).

In a famous letter by Umar ibn al Khattab written to Abu Musa al Ashri after appointing him as qazi had principles of Sulh. Hazrat Umar wrote:

*“All types of compromise and conciliation are permissible except those which make haram anything which is halal and a halal is haram”.*

**b) Tahkim:** This principle is derived from the following ayah of the Quran :

*“If you fear a breach between them (the man and his wife), appoint (two) arbitrators, one from his family and the other from hers; if they both wish for peace, Allah will cause their reconciliation. Indeed Allah is Ever All-Knower, Well-Acquainted with all things”.*<sup>9</sup>

As the ayah suggests it is a process of settlement by involving a third party. The prophet himself acted as an arbitrator on several occasions and appointed arbitrators in several cases. Back then the decision of the arbitrator was considered final and binding on the parties.

**c) Muhtasib:** Surah Nisa ayah 110 says:

*“Let there arise out of you a band of people inviting to all that is good enjoining what is right and forbidding what is wrong; they are the ones to attain felicity.”*<sup>10</sup>

The first two ombudsmen of Islam were Umar bin Khattab and Sa’adUmayyah, they were appointed by the prophet himself. Their main job was to take account (hisab). The ombudsman also handled the affairs of the community such as maintenance of the mosque, public roads, municipality, etc.

**d) Fatwa:** Fatwa is the opinion of a mufti in the light of sharia. It is a very famous and proven way to settle disputes. The parties submit their problem to the mufti and he issues the fatwa. It is generally based on reasoning and good conscience and is completely upon the discretion of the party to abide by it.

These principles of ADR have been used since the time of the prophet and therefore an integral part of dispute resolution in Islam. The Muslim community has regard for the Sunnah of the

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<sup>9</sup> Quran: Chapter 4 verse 35.

<sup>10</sup> Quran: Chapter 4 verse 110.

prophet and therefore it is used today in settling disputes. The same principles are used by Darul Qaza in contemporary ways.

#### **4. Exploring the Constitutional Validity of Darul Qaza**

The apex court in its landmark judgment in the Vishwa Lochan Madan case clearly stated that sharia courts are not courts because the Indian legal system does not recognize a parallel judicial system. But the court also refused to deem them unconstitutional.”

The constitutional validity of the Sharia court was questioned in the case of *Vishwa Lochan Madan vs Union of India & Ors*<sup>11</sup>, wherein a petitioner (Vishwa Lochan Madan) filed a writ petition in response to a Fatwa issued by Dar-ul-Uloom of Deoband regarding Imrana, a 28-year-old Muslim woman and mother of five children who her father-in-law allegedly raped. Her marital status, and the status of her children born in wedlock with the rapist's son, came into question in this case. Further, a Fatwa was given by Qazi which dissolved the marriage and issued a ruling for a perpetual injunction prohibiting the husband and wife from living together.

The petitioner claims that all of these Fatwas have the endorsement of the All India Muslim Personal Law Board, which is working to build a parallel Muslim court system in India. He claimed that dispute resolution is primarily the role of a sovereign State, which cannot be abdicated or parted with.

Respondents of this case contended that the Fatwas are advisory in nature, and no Muslim is obligated to observe them. Furthermore, Dar-ul-Qaza does not administer criminal justice; rather, it serves as an arbitrator, mediator, negotiator, or conciliator in matters pertaining to family disputes or any other civil dispute between Muslims, and Dar-ul-Qaza has no authority, means, or force to have their Fatwas implemented, and present writ petition is based on ignorance and/or misunderstanding that they are parallel courts or judicial systems.

Deciding in favor of Sharia courts and rendering them constitutional, a two-judge bench comprised of Chandramauli Kr. Prasad and Pinaki Chandra Ghose held that the decisions of Sharia Courts are mere directories in nature having no legal effect and are not binding on the parties concerned, it is within the discretion of the persons concerned either to accept, ignore,

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<sup>11</sup> AIR 2014 SC 2957

or reject it. Hence these courts are not running parallel judiciary.

As Chandramauli Kr. Prasad, J., observed in this connection:

*“The object of establishment of such a court may be laudable but we have no doubt in our mind that it has no legal status. It is bereft of any legal pedigree and has no sanction in the laws of the land. They are not part of the corpus juris of the State.”*

In an article published in Indian Express, Faizan Mustafa, a renowned legal scholar said that “Darul Qaza (sharia courts) are not courts in the strictest sense of the term but counseling or arbitration centers. They are accessible, useful, informal, and voluntary institutions that provide speedy and inexpensive justice to the poor<sup>12</sup>.

Arbitration, mediation, conciliation, and other alternative techniques of resolving disputes between parties without the involvement of the court are permitted under Section 89 of the Civil Procedure Code 1908. In its 129th Report, the Law Commission of India<sup>13</sup> promoted the need for parties to settle disagreements amicably, and the Malimath Committee report<sup>14</sup> suggested that courts submit disagreements for resolution through alternative channels as opposed to litigation or trials. Hence, Darul Qaza works in line with this mechanism and aims towards an amicable settlement of disputes outside the court. So, we can say that the word ‘court’ is a misnomer, it is not a court in a strict sense but an arbitration council.

Further, the existence of a sharia court in no way will lead to the replacement of modern jurisprudence by Islamic laws as it only deals with the matters allowed under the Muslim Personal Law (Shariat) application Act 1937 which is followed by our formal court in disputes concerning Muslims. Unlike Khaap panchayats, they do not deal with criminal cases and accept the Indian Penal Code. Hence, it abides by the law of the land.

## **5. Working of Sharia Courts**

Sharia courts work towards eradicating social inequalities and providing justice as a right to all through, democratic means irrespective of caste, creed, and gender. It works towards the achievement of the resolutions of memorandums, declarations & conventions on Human Rights

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<sup>12</sup> Faizan Mustafa Mahendra Shukla, Justice more accessible, The Indian Express, 11, (Delhi edn., Jul 16, 2018).

<sup>13</sup> Law Commission of India, 129th Report on Urban Litigation: Mediation as Alternative to Litigation (1988).

<sup>14</sup> Government of India, “Report of the Committee on Reforms of Criminal Justice System” (Ministry of Home Affairs, 2003).

for citizens of India<sup>15</sup>.

The procedure of initiating a case in Darul Qaza is very simple and hassle-free as the applicant only has to send an application to the respective Darul Qaza and thereafter Darul Qaza takes the work in their hands for further proceedings. It is mandatory for the applicant to provide the name and address of both parties to the dispute along with the problems arising out of dispute and reasons for such disputes. Qaza may specifically ask the applicant on personal matters related to the case.

Next, Darul Qaza inform the other party through post to appear before the Qaza, and in case the other party refuse to accept the invitation or if the invitation did not reach him at all, then some relative or socially active people relating to the other party are informed who then try to convince him to appear before the Qazi.

Qazi then initiates the proceeding and first focus on settling the matter by means of conciliation to arrive at a conclusion beneficial for both parties. And if the dispute still persists then the Qazi record the statement and study the evidence provided and thereafter pronounce the *Sharayee Opinion* (Opinion in accordance with sharia).

Parties if dissatisfied may also file an appeal in Qaza and Qaza then arrange a different Qazi to look into the matter and decide the dispute. Qaza also provides a note that the opinion is not binding on the parties and if dissatisfied, they may approach the court in furtherance of the dispute.

## **6. The Need for Darul Qaza in the Current Scenario**

Darul Qaza is an alternative conflict resolution method that aims to address the burden on the Judicial system. In reality, ADR mechanisms are the new normal due to the pendency of cases as pending cases are rising at an alarming rate with the backlog touching 41 million cases in lower courts and 6 million cases in High Courts. Supreme Court alone accounts for 80221 pending matters<sup>16</sup>.

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<sup>15</sup> Available at: <http://www.imaratshariah.com/about.php> (Last Visited on 6th February 2025).

<sup>16</sup> Available at: <https://www.scobserver.in/journal/80221-cases-pending-in-the-supreme-court-in-january-2024/> . (Last Visited on 6th February 2025).

Further, Daksh, a nonprofit organization, conducted a survey in 2017 that questioned 45,551 people across 28 states and 385 districts. According to the survey, when confronted with a major issue, Indians first turn to family, friends, village elders, or caste or religious panchayats for resolution. In comparison to these informal, non-judicial procedures, respondents in the Daksh research ranked courts and the police as their least favored options for obtaining justice, believing the justice system to be too costly, difficult, and delayed to address their issues.<sup>17</sup>

The majority of respondents in Daksh's research who used informal justice channels were low-income, implying that the costs associated with the formal judicial system are a significant barrier to access to justice. Daksh's earlier. Further, Access to Justice report, published in 2015-16, revealed that litigants in India spend Rs 30,000 crore per year only to attend court trials.<sup>18</sup> In such a situation opting for ADR is the most logical option, especially for the poor. While being a faster and cheaper mechanism Darul Qaza will also serve as a helping by reducing the load on our formal courts by disposing of personal matters of the Muslims.

## **7. The Advantages of Mediation in Dispute Resolution**

Mediation is a voluntary informal process of conflict resolution undertaken by the parties in dispute before an independent third-party mediator wherein the issues are discussed and arrive at a conclusion favorable for both parties.

Mediation has a prominent place in Islamic law as depicted by various narration providing proof about the existence of mediation during the early Islamic period. Even before the Prophethood of Mohammed (Pbuh) it was a customary practice among the pagans of the Arabian desert although the extent of mediation was comparatively low as most of the disputes tended to be solved through the sword signifying barbaric tribalism.

Mediation in Islamic law is evident as Allah (SWT) revealed:

*“Help one another in furthering virtue and God-consciousness, and do not help one another in furthering evil and enmity, and remain conscious of God: for, behold, God is severe in retribution”<sup>19</sup>*

*“The believers are nothing but brothers, so make peace between your two brothers and*

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<sup>17</sup> Johari, The Indian justice system is too slow, too complex and too costly, says new study.(2019). Available at: <https://scroll.in/article/866158/the-indian-justice-system-is-too-slow-too-complex-and-too-costly-says-new-study>. (Last Visited on 6th February 2025).

<sup>18</sup> *Ibid.*

<sup>19</sup> Quran: Chapter 5 verse 2.

*beware of Allah that perhaps you may be shown mercy.*"<sup>20</sup>

Besides this, there are several Hadiths of the Prophet (PBUH) which support the peaceful settlement.

The Prophet says in one of the hadith that:

*"Conciliation between Muslims is permissible, except for conciliation that makes lawful unlawful and unlawful lawful"*<sup>21</sup>.

Abu Darda' RA narrated that the Prophet (pbuh) said:

*"Shall I not tell you something that is better than the status of (voluntary) fasting, prayer and charity?" They said: "Yes." He said: "Reconciling in a case of discord, for the evil of discord is the shaver."*<sup>22</sup>

There are a number of other significant benefits of mediation and they include:

- **Quick Justice:** Mediation generally only takes days or weeks whereas litigation usually takes months or years. It drops the plight of undue delay on the parties and help them to save invaluable time and proceeds with their tasks.
- **Inexpensive:** The cost incurred on hiring a mediator is way too less as compared to hiring a lawyer and as it usually takes much less time compared to litigation hence parties are paying lesser money for a shorter duration of time.
- **Informal:** The process of mediation is less formal than that of litigation as litigation involves a huge amount of rules and regulation to be followed in the suit but mediation on the other hand focus on the issue.
- **Confidential:** Lawsuits are public in nature but mediation is held in private and is completely confidential with no leakage of any evidence or information regarding proceedings.

## **8. Privatization of justice – A Trend**

Alternative dispute resolution (ADR) procedures are the new standard as, in practice, traditional courts, like other branches of government bureaucracy, have several issues. At their best, they are frequently slow, and at their worst, they act as conduits for egregious injustice. The need for prompt and efficient justice is common and is protected by the Constitution as a fundamental right. As a result, alternative dispute resolution (ADR) has become more important in practically every civilized society, where court cases and lawsuits have reached

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<sup>20</sup> Quran: Chapter 49 verse 10.

<sup>21</sup> Sunan al-Tirmidhi 1352.

<sup>22</sup> Sunan Abi Dawud 4919.

all-time highs.<sup>23</sup>

The reduction in the use of public court systems and the transition to private, largely unregulated and unscrutinized proceedings is a global phenomenon. After retirement, the majority of Supreme Court and high court justices work as arbitrators. Unfortunately, these arbitrations are expensive and involve huge sums of money. Whereas Darul Qaza focuses majorly on the settlement of issues of poor sections of society through arbitration and conciliation.

Similarly to aid the courts Legal Service Authorities Act 1987 was enacted by the government in light of Article 39-A of the Indian constitution. As per sec 19(5) of the said act, the disputes are settled through mediation and conciliation in Lok Adalats. It has been working for a considerable time period rendering speedy and free-of-cost justice.

As Sharia Courts are nothing more than arbitration councils it should be seen as a part of the same social movement. Fundamentally, there is no proof that our judiciary's adversarial system is the most effective means of resolving conflicts. When parties decide to use arbitration instead of government courts, it shows that arbitration benefits both of them.

## **9. Empirical Findings**

In light of the issues discussed above, the researchers conducted a study in Darul Qaza (South Delhi and South East Delhi) and to dig deep into the functioning of Darul Qaza in the whole of India, we also had an extensive interview with Qazi Tabrez Alam who is currently working as Organiser, Darul Qaza Committee (All India Muslim Personal Law Board).

It is to be mentioned that sharia courts in India are established under 2 main bodies i.e, All India Muslim Personal Law Board (estd.1973) and Imarat-e-Sharia(estd.1921). Imarat-e-Sharia focuses on the states of Bihar, Odisha, and Jharkhand while AIMPLB has sharia courts established in 10 states across India.

Above mentioned claims about the advantages of Darul Qaza such as quick and cheap resolution of the disputes were reaffirmed as it was found that the average cost incurred in a

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<sup>23</sup> Katar Singh v. State of Punjab, 1994 SCC (3) 569

case under Darul Qaza is approximately ₹500. However, the cost incurred depends on the area of resolution of the dispute which ranges from ₹300 in Delhi to ₹2000 in Mumbai. The average time taken for a case to be resolved is 5 months. However, it may exceed in certain exceptional circumstances such as default on behalf of the parties. On average, the number of cases solved in each Qaza, in a year ranges from 80 to 90.

The Board's organizer, Qazi Tabrez Alam, shed light on the fact that almost 90% of the cases registered are solved by way of settlement. Only 5% of cases are closed because of various reasons such as, a request by the party itself to close a particular case or if the case has been settled elsewhere. It is only in the remaining 5% cases that the Qazi has to deliver his opinion ["Sharyee opinion"]. This opinion is not binding on the parties<sup>24</sup> and parties are free to go to the formal justice system in case of dissatisfaction.

He also emphasized on the fact that since the inception of Darul Qazas about 1% of the parties approach the formal justice system by reasons of dissatisfaction over the opinion of Qazi. This suggests that the satisfaction level stands as high as 99%.

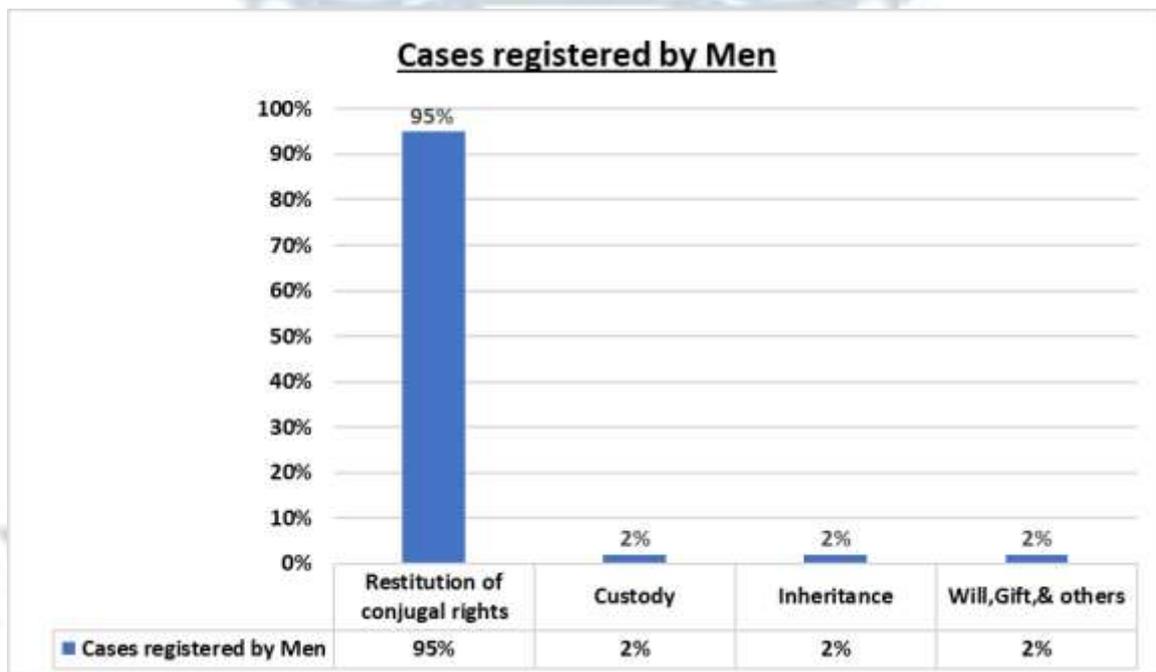
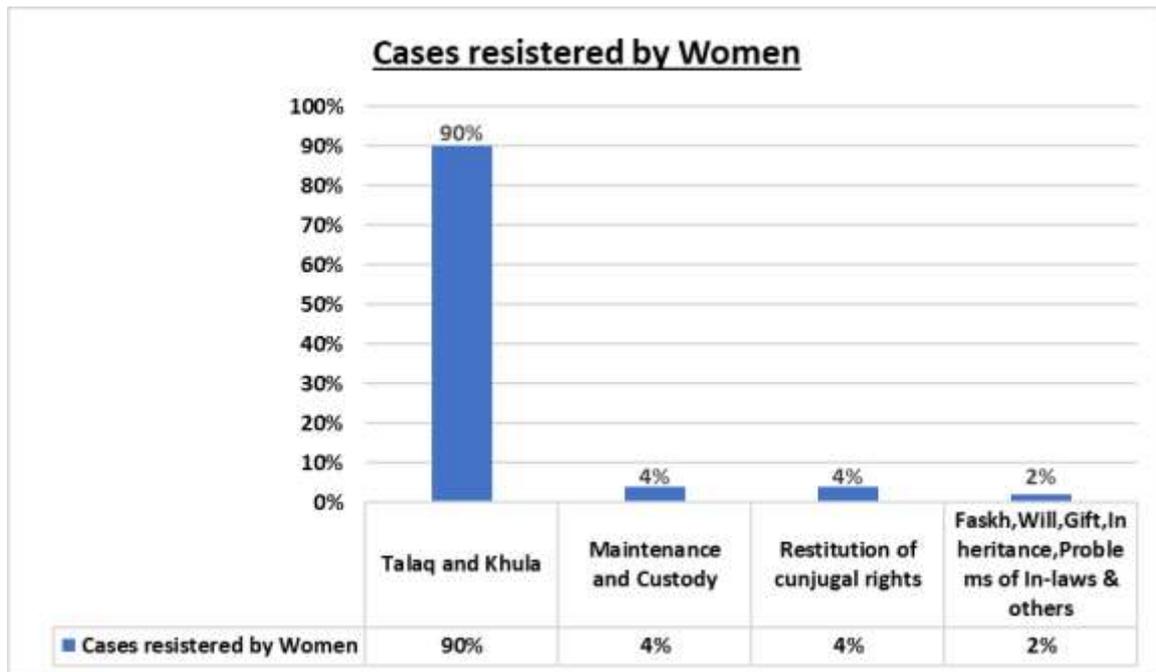
Trends in respect of an application made to the Qaza favors heavily toward women. Nearly 90% of the cases witnessed in these courts are registered by the women, whereas the cases registered by men account for mere 10%.

When asked about the statistics on favoritism to a party, he asserted the fact that most of the disputes are settled in a way that benefits both parties. Sharia courts aim to settle disputes in a way that helps families to live happily by eliminating the dispute rather than deciding a party as the winner.

The issues under which applications are filed in Sharia courts are quite similar as about 90% of the applications are regarding Talaq and the Restitution of conjugal rights(When Male wants to have their wives back at their home if she left due to a dispute). Maintenance, custody, will, gift and other miscellaneous issues constitute the rest of the cases.

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<sup>24</sup> The non-binding nature of the opinion is expressly mention and informed to the parties.



Certain instances prove the extreme faith of people in sharia courts. Qazi Tabrez Alam narrated a case where a non-muslim girl converted to marry a Muslim boy only to realize that they had to divorce a few weeks later. Circumstances esclated to communal tension leading to the elopement of the boy. After considering the options, the father of the girl approached Darul Qaza seeking justice. Qazi started the proceeding and to everyone's surprise, the boy arrived in the Qaza and participated in the proceedings. Thus depicting ultimate faith in the institution of Darul Qaza. Qaza then stood up to its reputation and arranged for Khula (divorce initiated by the girl where she agrees to leave her mehr) within a day.

Several cases were also decided in Darul Qaza Ahmedabad and Darul Qaza Bhandara where both the parties in dispute were non-muslim. These cases were not concerned with the family issue but certain business matters. Here Darul Qaza was used as a purely secular arbitration council which set an example of immense faith of people in this institution.

Enquiring about the ease of access to Sharia court we came across a distinctive feature of Darul Qaza named 'Simaat-e-Sarzameen'. According to this, if a party is so gravely ill or is so infirm so as to reach the sharia court then Qazi himself approaches the party at the place of residence or nearest mosque or school, whichever is more feasible to conduct the hearing. Simaat-e-Sarzammen aims that everyone should have access to justice despite any obstacles. So, this can easily be termed as an exemplary feature of Sharia courts.

### **10. Conclusion and Suggestions**

As Islamic law is divine in nature, it is not possible for humans to amend it as per their whims and fancies. Muslims have to abide by the law provided by Allah and seek justice in accordance with the command of Allah.

Sharia Courts serve the purpose of adjudication on civil matters in accordance with Islamic law. To clear the air with regard to absurd view proclaiming Sharia courts as the parallel justice system, it has been proved on numerous occasion that they are mere arbitration councils and are legal within the framework of the Indian constitution. Adjudication of justice here is quick, easy and money-saving with satisfaction level as much as 95%.

The Supreme Court in its landmark judgment in the Vishwa Lochan Madan case<sup>25</sup> clearly stated that Sharia Courts are not courts in the strict sense as the Indian legal system does not recognize the existence of a parallel judiciary. The court refused to deem them unconstitutional as every institution working in India has to exist within the framework of the constitution and the Supreme Court, acting as the guardian of the Indian Constitution held Sharia Courts as legal within the ambit of the Constitution.

Sharia courts also help to take some weight off the shoulders of already burdened Indian Judicial System with the backlog touching 47 million cases. As sharia courts take up the civil

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<sup>25</sup> AIR 2014 SC 2957

matters for arbitration, therefore, those matters are not approached in the formal justice system. So, Formal courts can concentrate on major issues.

Proper functioning and recognition of such courts among the masses can do wonders in steadily progressive Indian society which will spend their valuable time in productive work rather than roaming around the courts for years waiting for justice. Formal courts are known for inevitable delay and splurge of money which often dishearten the public in order to approach the court, leading to the settlement of the dispute through illegal means which at times result in blood feuds.

Moreover, the decisions of Sharia courts are not at all binding, the Qazi himself provides a 'note' that his opinion is not binding and may be challenged in the Formal courts. Hence there is no such compulsion to follow the opinion of Qazi.

The role played by Sharia court is truly worthy of praise. They are working exceptionally well within their sphere. Hence the researchers point out the following suggestions:

1. Firstly, Considering the increasing number of cases it can be said that sharia court is the need of the hour. Therefore, more and more courts should be established and made easily accessible. Sharia court should be recognized as an ADR mechanism and cases related to Muslim personal law should be referred to these courts.
2. Secondly, these courts are not very popular and even many Muslims have no idea about the existence of such body. It needs to be popularised.
3. Further, On an organizational level, institutes should be set up to train Qazi. For the effective working of these courts, well-trained qazi are highly required.
4. Women should also be trained and at least one woman should be placed as Qazi or Nayab qazi in every Darul Qaza. Even setting up of more and more all-women sharia court should be taken into consideration. This will encourage women to approach these courts even more.

To sum up the situation, it is safe to say that Sharia Courts are acting as a helping hand of the Formal Judicial System. They are not courts in a strict sense but are mere arbitration councils. Being a faster and cheaper mechanism of adjudication of justice and considering the rate of increase of dispute settlement by ADR mechanism throughout the world, Sharia courts can be considered as the need of the hour.